

ARNHEM, 12th. August 1948.

NETH-30

IN THE NAME OF THE QUEEN!

The Special Court in ARNHEM has passed the following sentence in the case of the Chief Prosecutor against:

FRIEDRICH CHRISTIAN CHRISTIANSEN,

born 12th December 1897 on WIJK (island of FÖHR),
ex-General der Flieger,
living in Germany,
now detained in ARNHEM prison, ACCUSED:

The Special Court;

In view of the investigation at the sitting;
Having heard the demand made by the Chief Prosecutor;
Having heard the accused, assisted in his defence by Dr.
J.H. ARNOLD, advocate, ARNHEM;

Considering that the accused has been charged:
that he in the Netherlands, during the time of and in connection
with the war of aggression begun by Germany against the Netherlands on 10th May 1940 and before 15th May 1945, as a German military commander in this country, that is as Wehrmachtsbefehlshaber in den Niederlande, at anyrate in the active military service of or with the German enemy, misusing his power and authority as such:

1. 1. intentionally, contrary to the laws and customs of war, after an attempt had been made in ROTTERDAM on or about 7th August 1942 by one or more persons then unknown to attack a train transporting German soldiers, as a retaliatory measure caused Netherlands hostages to be shot by presenting a demand to this effect to the Reichskommissar für die besetzten niederländischen Gebiete and/or the Höhere SS- und Polizeiführer, also Generalkommissar für das Sicherheitswesen, and urging these functionaries or one of them to have such a measure carried out and holding a conference with them or one of them for the purpose of having such a measure taken, as a result of which five Netherlands who were innocent of the attempted attack; namely: Dr. R. BAELDE, Chr. BENNEKERS, Dr. Count O.E.G. van LIMBURG STIRUM, W. RUYS and Baron A. SCHIMMELPENNINCK van der OYE, were shot and killed by a firing-squad on or about 15th August 1942 in GOIRLE municipality;
2. intentionally, contrary to the laws and customs of war, after a German soldier had been shot dead in HAARLEM on or about 30th January 1943 by one or more persons unknown demanded of and/or urged the Höhere SS- und Polizeiführer who was also Generalkommissar für das Sicherheitswesen and/or the Reichskommissar für die besetzten niederländischen Gebiete that a number of Netherlands citizens should be shot as a retaliatory measure, as a result of which ten persons, namely: B. CHAPON, H.O. DRILSWA, P. FRANK, J. Th. LEBBE, K.F. REUMAN, W. de la RIE, R. STRENGHOLT, S. WARRENHOVEN, P. WEY and I. ZWANENBEEK, of whom it was in no way established or proved that they were concerned in carrying out that attack, were shot and killed by a firing-squad on or about 2nd February 1943 in BLOEMENDAAL municipality;
3. intentionally, contrary to the laws and customs of war and/or

-of humanity-

- 3 -

3. Intentionally, contrary to the laws and customs of war and/or of humanity, after an attack had been made in or near PUTTEN on the night of 30th September - 1st October 1944 on German soldiers sitting in a car, by his orders, at anyrate by his instructions, caused as a retaliatory measure a great part of the able-bodied male population of PUTTEN to be arrested by German troops under his command and had them handed over to the SS. to be taken off to Germany, as a result of which these men with a few exceptions were deported to Germany where the majority of them died in horrible circumstances, caused women, children and old people to be driven out of their homes in PUTTEN and had a great number of houses in PUTTEN set on fire and destroyed;
- at anyrate, in case that charged under 3 (taken in conjunction with what appears in the opening of the indictment) might not lead to a conviction:
- after an attack had been made in or near PUTTEN on the night of 30th September - 1st October 1944 on German soldiers sitting in a car, as the superior of the German military men on staff and of the German troops charged with carrying out the retaliatory measures, intentionally allowed that the military men on his staff, who were subordinated to him, caused German troops under his command to arrest a great part of the able-bodied male population of PUTTEN and had them handed over to the SS to be taken off to Germany, as a result of which these men with a few exceptions were deported to Germany where the majority of them died in horrible circumstances; caused women, children and old people to be driven out of their homes in PUTTEN and had a great number of houses in PUTTEN set on fire and destroyed;
- he, the accused, although he knew, at anyrate understood, that retaliatory measures which were contrary to the laws and customs of war would be taken against PUTTEN and/or the inhabitants of PUTTEN on account of the said attack, ~~at anyrate although of the said attack~~, at anyrate although he understood that there was a great possibility of such retaliatory measures being taken, having given the military men on his staff a free hand in the issuing of orders concerning the retaliatory measures to be taken and the execution of same, and having exercised no control over this;

Considering that at the sitting of the Court the accused has stated with regard to all the acts with which he is charged:

"On 29th May 1940, after having been appointed "Wehrmachtsbefehlshaber in die Niederlande"-Commander of the German Forces in the Netherlands, (to be further called WBN) by the Führer, ADOLF HITLER, I took over the command of the German troops in the Netherlands from General von FALKENHAUSEN and exercised this function until the capitulation of the German army in the Netherlands in 1945.

My powers as "Wehrmachtsbefehlshaber" were among other things fixed and specified in an "Erlass des Führers" (Führer Decree) dated 18th May 1940 of which paragraphs 2 and 3 read:

Par 2: " The German Wehrmachtsbefehlshaber in the Netherlands exercises sovereign military rights; his demands in the civil domain will be accomplished by the Reichskommissar. He has the right to order those measures necessary for the execution of his military instructions and for military security. The same right belongs to the Oberbefehlshabers of the Wehrmacht sections."

-Par. 3.-

par 3: "The Reichskommissar may make use of German police organs for the carrying out of his orders. The German police organs are at the disposition of the Wehrmachtsbefehlshaber in the Netherlands as far as this is demanded by military requirements and the tasks of the Reichskommissar allow of it."
as well as in an "Erlass des Führers" dated 20th May 1944 of which paragraph 5 reads:

par 5: "Demands by the Wehrmacht which are to be carried out in the civil domain shall be presented by the Wehrmachtsbefehlshaber to the Reichskommissar for the occupied Netherlands territories. Demands which the Oberbefehlshaber of the Wehrmacht sections may wish to make in the civil domain must be sent in via the Wehrmachtsbefehlshaber in the Netherlands. If in cases of urgent necessity the Oberbefehlshaber contact the Reichskommissar direct the Wehrmachtsbefehlshaber must be informed of this.

In the case of a military threat to the Netherlands territories the Wehrmachtsbefehlshaber is empowered to order all measures desirable for defence, this in the civil domain also. Here too he must give his orders as far as possible through the Reichskommissar."

I knew during the years 1940-1945 that the war of aggression begun by Germany against the Kingdom of the Netherlands on 10th May 1940 was still going on;"

Considering with regard to that charged in the opening of the indictment and under 1:
that the following have declared as witnesses at the sitting of the Court:

HANS ALBIN RAUTER:

"After an attack on a German military train carrying a great number of men going on leave had taken place in ROTTERDAM on 7th August 1942, the WBN, the accused CHRISTIANSEN, demanded satisfaction for this. As a result of the attack a conference took place in the Hague, at which in addition to the Reichskommissar, the accused and I myself, several other persons were also present. At this meeting the accused, by direction as he said of the Oberkommando der Wehrmacht - Defence Minister - (further to be called the O.K.W.), demanded of the Reichskommissar that as a retaliatory measure for the attack twenty hostages should be shot. He wished however before this was proceeded with to give the author(s) the opportunity to report himself (themselves), this to take place before midnight on 14th August 1942. A Wehrmacht matter was concerned here but as "Höhere SS- und Polizeiführer" I also had to be consulted. I personally was against the execution of hostages particularly in this case, because in my opinion the attack here was made by Communists, because and considered that the author (s) must first of all be sought and because the attack failed and not one German soldier lost his life as a result of it. I informed the company of all this but the accused maintained his ground and insisted that twenty hostages be shot. The meeting lasted from 9 a.m. till 12 noon. As a compromise it was finally decided to shoot five hostages. The accused then on or about 8th August 1942 had the "Bekanntmachung" (announcement), the text of which I have heard read out here, published in the daily press.

After a list then containing the names of twenty hostages qualified for shooting had been drawn up by Dr. HARSTER's deputy, S.S. Standartenführer KNOLLE, in collaboration with the leader of the

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S.D. Aussenstelle in ROTTERDAM, I together with KNOLLE and the said leader chose from the list five persons who were the most politically tainted. I remember that among these five were: RUYS, BAELE and BENNEKERS, and two more. After this I sent the papers to the Reichskommissar who then asked that among the five people to be shot should be included two who, came close after the Queen. Two of the persons on the list, those whose names I do not remember, were then scratched off and in their place came van LIMBURG STIRUM and SCHIMMELPENNINGK van der OYE. On Wednesday 12th August 1942 I talked this affair over once more with the accused at CRAILLOO. I already knew then that the S.D. in ROTTERDAM was on the track of the author(s) and I told the accused this. The latter however answered that he stuck to it that the author(s) must be found before Saturday otherwise the executions would go through irrevocably.

I cannot remember that witness SCHREIEDER rang me up about this matter on the evening of 14th August 1942, but if he says this was the case I do not then dispute it. I do know that KNOLLE telephoned me that evening and told me something similar to what SCHREIEDER declares he brought to my notice. I passed KNOLLE's information on to the accused that same evening. The answer given by the latter came down to this, that the executions must go through now that nothing concrete had yet been found.

I was the executive authority here and had to give orders for the executions. KNOLLE received instructions for this from me and I directed General SCHUMAN, Befehlshaber der Ordnungspolizei, to take over the five hostages from KNOLLE and to execute them. I know that the five hostages, whose names appear more fully in the "Bekanntmachung" dated 15th August which I have heard read out here, were shot and killed by a firing-squad in GOIRLE on 15th August 1942;"

JOSEPH SCHREIEDER:

"After an attack had been made on a German military train in ROTTERDAM during the evening of 7th August 1942 I started an investigation into the matter and with the help of ANTON van der WAALS, who was my secret agent, tried to trace the author or authors.

Already on 10th August VAN DER WAALS told me that in a café in ROTTERDAM he had got into contact with a man who in his opinion was a communist and who, to judge by his tales, had carried out the attack in question, either alone or with helpers. In connection with the announcement by the W.B.N that hostages would be shot if the author did not report to the police before midnight on 14th August or was not denounced by the population, I then rang up witness RAUTER and told him I was playing a little game and already had contact with the author who belonged to communist circles. I added that I was giving this information so that he, RAUTER, would try to prevent hostages being shot. RAUTER then asked me for the author's name, to which I replied that I did not know it but that I could definitely say that the person alluded to by me was the author, or one of the authors, and that he was a communist;"

ACCUSED:

"After an attack had been made in ROTTERDAM on 7th August 1942 on a German military train I immediately notified the O.K.W. I then received orders from the O.K.W. that a number of hostages were to be "in Anspruch genommen" (demanded) and that I was to pass this order on to the Reichskommissar. I said to the people on my staff then: "Jetzt haben wir die Mord-Schweinerei da (now we have that filthy murder business)".

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In connection with this attack the Reichskommissar held a meeting in the Hague on 8th August 1942 at which in addition to the latter, witness RAUTER, and several other persons were present. I then passed on the O.K.W.'s demand to the Reichskommissar and urged that a number of hostages should be shot as a retaliatory measure for the said attack. It was finally decided at that gathering to have five hostages shot. The publications in the daily papers concerning this matter, and which I have heard read out here, are known to me. We were bound by the order from the O.K.W. to shoot hostages and could not get out of it through hints that people were perhaps on the track of some of the authors whose names were not even known. I know that as a result of the aforementioned demand made by me the five hostages named in the daily paper dated 15th August already referred to, which hostages were innocent of the in question were shot and killed by a firing-squad in GOIRLE municipality on 15th August 1942. In military matters I was witness RAUTER's chief."

Considering that a statement dated 1st May 1947 made out on oath of office by JAN GEWALD, state detective 1st class, post GRONINGEN, contains that ALBERT KONRAD GEMMEKER, born 27th September 1907 in Düsseldorf, declared in brief to the above:

I was commandant of the camp for hostages at St. MICHIELS-GESTEL in Noord-Brabant from 27th June 1942 to 12th October 1942 inclusive. I was present one day in August 1942 when five hostages, named respectively: SCHIMMELPENNINCK van der OYE, Court VAN LILBURG STIRUM, BAELE, BENNEKERS and RUYS, coming from the St. MICHIEL-GESTEL and HAAREN camps, were shot at a spot on the heath in NOORD-BRABANT by a firing squad consisting of 40 men. Obersturmbannführer KNOLLE was in charge here."

Considering that a "Bekanntmachung" (announcement) dated: The Hague, 8th August, reads as follows:

"Further to his "Bekanntmachung" of 13-7-1942 which appeared in all Netherlands newspapers, the following is officially made known by order of General der Flieger Fr. CHRISTIANSEN, Wehrmachtsbefehlshaber in the Netherlands.

An attack by irresponsible elements was made in Rotterdam on 7th August on a German Wehrmacht railway train. A Dutch railway man while doing his duty fell a victim to the attempt.

If before midnight on Friday, 14th August, the authors do not report to the police, or by the co-operation of the population are not denounced, a number of hostages will be apprehended by virtue of the "Bekanntmachung" of the Wehrmachtsbefehlshaber in the Netherlands and will pay for the said act of sabotage with their lives.

It is to the individual interest of the entire population that the authors should be caught in order to avoid this seizure of hostages. For information given in time to a German Wehrmacht post or to the police and which leads to the apprehension of the authors the Wehrmachtsbefehlshaber in the Netherlands promises a reward of f. 100.000.-.

All information will be treated in confidence.

The Höhere SS- und
Polizeiführer und General-
Kommissar für das Sicher-
heitswesen,

RAUTER,
SS-und Gruppenführer und
Generalleutnant der Polizei".

-considering-

Considering that a "Bekanntmachung" dated: The Hague 15th August, reads as follows:

"As ⁱⁿ spite of the urgent demands of the Wehrmachtsbefehlshaber, General der Flieger CHRISTIANSEN, the authors of the explosives attack in ROTTERDAM were too cowardly to give themselves up, the following hostages were claimed and were today shot:

1. RUYS, Willem, General Director, ROTTERDAM;
2. Count E.O.G. van LIMBURG-STIRUM, ARNHEM;
3. BAELDE, Robert, Doctor of Laws, ROTTERDAM;
4. BENNEKERS, Christoffel, former Chief Inspector of Police, ROTTERDAM;
5. Baron ALEXANDER SCHIMMELPENNINCK van der OYE, NOORDGOUWE/Zeeland.

The Höhere SS-und Polizeiführer
Nordwest.

S/RAUTER,
SS-Gruppenführer und
Generalleutnant der Polizei."

Considering, that a statement of the interrogation of the accused by the Examining Magistrate dated 5th November 1947 (prod. 152 V) contains the statement by the accused:

"I personally found the execution of hostages on 15th August 1942 inhuman, and as far as I can see it was also contrary to the laws and customs of war."

Considering with regard to that charged in the opening of the indictment and under 2:
that the following have declared as witnesses at the sitting of the Court:

HANS ALBIN RAUTER:

"After it had been reported to me that a non-commissioned officer of the German Wehrmacht had been shot and killed in HAARLEM on 30th January 1943 by one or more persons who remained unknown, I was rung up about it by the accused who said that as a result of "Führerbefehle" (orders issued by the Führer) and O.K.W. orders reprisals must be taken in this case. A "Wehrmachtsangelegenheit" (Wehrmacht affair) was concerned here and in military matters of that sort the accused was my chief. Very shortly after this a meeting was held about the matter by the Reichskommissar in the Hague at which meeting I was present. The accused was represented there by GAYKOW or BOURWIG. During the meeting the Reichskommissar held a telephone conversation in front of us with as he said, General CHRISTIANSEN, and I gathered from that conversation that CHRISTIANSEN was urging reprisals on the grounds of the "Führerbefehle". That this was the case was also told us by the Reichskommissar. The Reichskommissar, CHRISTIANSEN and I thereupon decided to take reprisals; 10 people from Jewish-communist circles would be shot. This decision was carried out. First a great number of persons coming from communist circles were arrested in HAARLEM and district and then 10 out of these, the names of whom I had published in the papers in the "Bekanntmachung" dated 2nd February 1943 which I have just heard read out here, were shot on the said date in BLOEMENDAAL municipality. It was not established or proved that these persons were concerned in the attack in question."

-Willy LAGES-

WILLY LAGES:

"On 30th January 1943 it was reported to me that a German non-commissioned officer, a so-called "Sanitäter" (ambulance corps man), had been shot and killed that day in HAARLEM by one or more unknown persons. As leader of the Sicherheitsdienst Außenstelle in AMSTERDAM I passed this news on at once to my chief, Dr. HARSTER, Befehlshaber of the SIPO in The Hague.

One of Dr. HARSTER's departmental chiefs named DEPPNER dealt further with this matter. From the latter I received orders that 80 to 100 anti-German elements in HAARLEM and district were to be arrested, preferably Communists and 10 of them were to be shot as a retaliatory measure in connection with the said attack. I then ordered two of my subordinates to effect these arrests and this was done. A selection of those to be shot was then made in the Hague, presumably by DEPPNER. I know that the 10 persons whose names are mentioned in the "Bekanntmachung" dated 2nd February 1943 which I have first heard read out here, were shot on this date in BLOEMENDAAL municipality as a retaliatory measure for the said attack. Several similar attacks had previously taken place in HAARLEM but I was not at all certain that in this case a "Liebesaffaire" (Love affair) was concerned. The aforesaid ten persons were executed before the investigation being carried out by my Aussendienststelle was closed. It was not established or proved that they had been concerned in the attack. DEPPNER told me that this retaliatory measure was taken at the urgent request of the W.B.N., General CHRISTIANSEN.

This attack was a "Wehrmachtsangelegenheit"

ACCUSED CHRISTIANSEN:

"I remember that one day about the end of January 1943 a German non-commissioned officer was shot dead in HAARLEM by one or more persons unknown. Such important occurrences were immediately told me at the conference I held with my staff each morning. This attack was a "Wehrmachtsangelegenheit". It is very possible that directly I had heard the news I rang witness RAUTER up personally and talked the matter over with him. I believe that I did then say that sharp action must be taken here. In the "Vortrag" (report) in which this attack was reported to me I was also informed that in the present case there was no question of a "Liebesaffaire", so that, in connection also with the Führer's orders, strong measures were necessary.

I also know that as a result of this attack a meeting was held in the Hague presided over by the Reichskommissar for the purpose of talking over the measures to be taken. As I myself was prevented from taking part in this meeting I sent my Chef-Richter (head judge), or it may possibly have been GAYKOW, to the Hague with authority to act as he thought best.

I cannot remember that during this meeting the Reichskommissar personally rang me up although this possibly did take place, but I do remember having heard that at the meeting the shooting of communists as a retaliatory measure was discussed. Witness RAUTER would take the executive measures.

I admit that I demanded stern measures in connection with this HAARLEM attack. By "stern measures" I understand in the first place the shooting of the guilty parties and if these are not found then the shooting of communists, I understanding under this heading, terrorists, saboteurs and persons of that sort.

I know that the 10 Netherlands citizens whose names appear in the "Bekanntmachung" dated 2nd. February 1943 and signed by witness RAUTER, which document I have heard read out here, were shot and killed by a firing-squad on or about that date in BLOEMENDAAL municipality, and I also know that it was

-no way-

in no way established or proved that these persons were concerned in the said attack.

In military matters I was witness RAUTER's chief."

Considering that a statement dated 12th March 1942 made out on oath of office by JAN PIETER MEULENBERG and LEENDERT BOTH, special constables of the HAARLEM post, contains that LUCAS ALDER born 13 th July 1883, funeral undertaker, living in HAARLEM? stated in substance to the above:

"At about midnight on 1st February 1943 I received orders from a German authority to see that I was present at 8.30 a.m. on 2nd February 1943 at the hotel "Duin en Daal" in BLOEMENDAAL with 5 other persons, a lorry and 10 coffins, which order I followed. We were taken from the spot indicated to the so-called "Karmeltrap" by the BLOEMENDAAL "Kopje" where we had to wait. Some moments later I heard salvos being fired near by, the sound coming from the dunes. A little while afterwards a detachment of Ordnungspolizei came out of the dunes from behind the "Kopje". We then received orders from one of them to take the coffins into the dunes. I then saw that at one spot in the dunes there were five posts standing to each of which a man was bound and just beyond this place another five posts to each of which also a man was bound. These men were dead and had bullet wounds in their heads. Among these dead I definitely recognised Dr. DRILSMA whom I knew and Rabbi FRANK who both came from HAARLEM."

Considering that a "Bekanntmachung" dated The Hague, 2nd February 1943, reads as follows:

"On the evening of Saturday, 30 th January last, a non-commissioned officer by the German Wehrmacht was shot down from behind in HAARLEM. The investigation immediately undertaken by the German Sicherheitspolizei has been unable to lead to the tracing of the author who however - the result of the investigation pointing to this - must be looked for in Jewish-communist circles. In agreement with the Wehrmachtsbefehlshaber Niederlande, General der Flieger F. CHRISTIANSEN, the 10 hostages appearing below and coming from Jewish-communist circles in HAARLEM have been executed today as a reprisal for the treacherous murder of a German soldier. In addition a fairly large number of communist agitators from this district have been sent to a concentration camp. The names of those executed are as follows:

1. DRILSMA, Herbert O., born 2-8-06 in AMSTERDAM, living in HAARLEM.
2. FRANK, Philipp, born 9-8-10 in HILVERSUM, living in HAARLEM.
3. CHAPON, Barend, born 4-8-84 in AMSTERDAM, living in HAARLEM.
4. ZWANENBEEK, Iwan, born 18-11-02 in DELFT, living in HAARLEM.
5. REUMAN, Karel F., born 1-3-16 in SCHOTEN, living in HAARLEM.
6. de la RIE, Wijnand, born 30-9-99 in LEIDEN, living in HAARLEM.
7. LEBBE, Johannes Th., born 16-12-87 in DEN HELDER, living in HAARLEM.
8. WARMENHOVEN, Simon, born 21-9-04 in VELSEN, living in VELSEN.
9. WEIJ, Pieter, born 22-11-03 in VELSEN, living in VELSEN.
10. STRENGHOLT, Roelof, born 5-11-06 in AMSTERDAM, living in VELSEN.

-The Hague-

The Hague, 2nd February 1943.
The Höhere SS-und Polizeiführer
Nordwest und Generalkommissar
für das Sicherheitswesen,
s/RAUTER
S.S.Gruppenführer und Generalleutnant
der Polizei".

Considering with regard to that charged in the opening of the indictment and under 3:
that the following have declared as witnesses at the sitting of the Court:

FRITZ WILHELM HERMANN FULLRIEDE:

"During the night of Saturday 30th September Sunday 1st October 1944, an attack was made in PUTTEN on a car in which two German officers and two German soldiers, all of the Hermann Göring division, were sitting. The officers were wounded. One of them was still able to drag himself to a farmhouse where he died next-day, the other was carried off. At that time I was Oberst of a Pantzer Grenadier-Regiment of which one company was stationed at PUTTEN. These troops came under the Wehrmachtsbefehlshaber in the Netherlands. I reported the said attack by Telephone to General von WULISCH, the W.B.N.'s Chief of Staff, on the morning of Sunday 1st October 1944. The latter then ordered me to surround PUTTEN and have the whole population arrested. I had this order carried out by the German troops under my command. The men were put into the school, the women in the church. After this that same Sunday I got telephonic orders from VON WULISCH to take the following retaliatory measures for the said attack

1. have those guilty shot;
2. burn PUTTEN down, with the exception of the house of that farmer who had taken the wounded officer in; I could also spare the houses of those who were pro-German;
3. evacuate the women and children;
4. deport (ab transportieren) the male inhabitants of PUTTEN aged 18-50.

Von Wulisch said further in answer to my question about this, that a train would be in PUTTEN station next morning to take away the men and that I must hand them over to the SS. for this purpose. I asked for a written Confirmation of the order and this was handed to me on the night of Sunday 1st-Monday 2nd. My batman FISCHER is one of the people who saw and read that order. The order was written on paper headed: "Wehrmachtsbefehlshaber in den Niederlanden" (in die Niederlande).

The next morning, Monday 2nd October 1944, the men aged 18-50 were collected together on the market square. I then in the church where the women and children were read out the above written order which was translated by the police lieutenant, witness OTTEN. The same day I had the following retaliatory measures which had been ordered taken in PUTTEN against the population:

I had 400 to 500 inhabitants of PUTTEN, whom I had had arrested the previous day by troops under my command handed over to the SS-battalions for taking away, and towards evening on 2nd October 1944 I had a number of houses in PUTTEN set on fire by the aforesaid troops. I further had the women and children evacuated from that part of the village which was to be burned.

All this I did by order of the W.B.N.
I think that during the second telephone conversation I mentioned, Von WULISCH said further something about the men being
-taken-

taken off to Germany for the "Arbeitseinsatz". In understood that the aforesaid retaliatory measures against Putten and its inhabitants which I was ordered to carry out were contrary to humanity.

The written diary shown me here by the President, and from which I have heard the passage of which mention will be made later read out here (prod E from the dossier against FULLRIEDE), is mine. I wrote it later from notes."

MARINUS GERARDUS OTTEN:

"When the action took place in PUTTEN early in October 1944. I was a 1st Lieutenant in the Motorised Police there. The "Oberst" who was in command at that time of the German troops there was the witness FULLRIEDE. After an attack had been made near PUTTEN on the night of 30th September-1st October on a car in which were German officers, the entire population of PUTTEN was brought together on the market square on Sunday, 1st. October 1944. The men were shut up in the school and the women in the church. The women and children were released that evening but had to return next day. On the Monday morning 2nd October 1944, the men were formed up on the market, the women, who had brought them their food, having to remain in the church. FULLRIEDE then ordered me to go into the church too and there he read out the W.B.N.'s order which was in German after which I translated it into Dutch by his instructions. That order contained the retaliatory measures which would be taken against PUTTEN in connection with the said attack. Among other things appeared in it that the male population of PUTTEN between the ages of 18 and 50 was to be taken off and PUTTEN must be burned down. After this FULLRIEDE gave orders to take away the male inhabitants and to set a number of houses on fire. The men who were collected together on the market square were then taken by German troops to the station and taken away by train. The women and children had to evacuate those houses which were to be burned down and this they did. Setting the houses on fire started about 5 o'clock that afternoon. I myself saw 5 set alight. I saw witness FULLRIEDE leave PUTTEN towards 7 o'clock. After that several other houses, also a cinema hall and ~~in~~ a café, were fired. About 100 houses were burned down. Many of the men taken away never returned and all of them were deprived of their liberty for more than a month."

HANS ALBIN RAUTER:

"I think it was first through General SCHÖNGARTH, Befehlshaber der Sicherheitspolizei, that I heard about the attack on a car in which German officers of the Hermann Göring regiment were sitting and which took place in the neighbourhood of PUTTEN on the night of 30th September - 1st October 1944. In any case it was SCHÖNGARTH who informed me that the Wehrmacht was demanding stern retaliatory measures in connection with this attack and said to me that General Von WULISCH, Chief of Staff of the W.B.N. CHRISTIANSEN, wanted as one of these measures to have the male inhabitants of PUTTEN transported to Germany for the "Arbeitseinsatz". A Wehrmacht matter was concerned here. I then suggested to SCHÖNGARTH that the male inhabitants under 50 who were suitable for the purpose should be put to do civilian work on the Netherlands German frontier, and also to have some so-called "Todeskandidaten" from the neighbourhood of PUTTEN shot. It turned out however that there were no such "Todeskandidaten" on hand and neither Von WULISCH nor I wanted to have hostages executed in connection with this affair. Very shortly after this SCHÖNGARTH rang me up and told me that in W.B.N. objections were raised against carrying the men

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off to Germany for the so-called "free" Arbeitseinsatz and that these same circles called for more radical measures. The male population of PUTTEN between 18 and 50 were therefore taken via AMERSFOORT to "NEUENGAMME" camp in Germany. This occurred because the Wehrmacht did not find it a stern enough measure to set those men to do free work in Germany. "Amersfoort" camp was a so-called "Durchgangslager" (transit camp) for Germany (an "Arbeitseinsatzlager"). I already heard on Sunday 1st October 1944 that it was the Wehrmacht's intention to send the PUTTEN men to Germany."

Considering that a statement of interrogation by the Examining Magistrate of the Special Court at ARNHEM, Dr. de ZAAVER, dated 29th November 1946 (prod. 65) contains in substance the statement as witness of:
HEINZ HELMUTH VON WOLISCH:

"I was warned one morning that the evening before or the previous night an attack had been made on two of our officers on the road between AMERSFOORT and ZWOLLE. It was at the time that the Allies were advancing near the ALBERT Canal. I at once took the necessary steps before going to General CHRISTIANSEN to report the matter to him. This affair was a "Wehrmachtsangelegenheit" and the reaction to it ought also to originate with the Wehrmacht. When I made my report about it to General CHRISTIANSEN the latter was "sehr erregt" (very excited), he walked excitedly up and down the room and said something like: "das ganze Nest muss angesteckt werden und die ganze Bande an die Wand gestellt (the whole place must be set on fire and the entire gang put up against the wall)." General CHRISTIANSEN without going into details then gave orders for sharp action to be taken. I talked over with Oberst von MULLER the order that we would lay before General CHRISTIANSEN and this draft order which we talked over that afternoon was signed by General CHRISTIANSEN when he had completely calmed down.

If I remember rightly the order contained the following among other things: the greater part of PUTTEN village, in the neighbourhood of which the assault had been committed, must be burned to the ground with the exception of public buildings and those belonging to "deutsch-freundliche" civilians (civilians friendly to the Germans). It is not impossible that it also appeared in this order that the inhabitants were to be taken off, but then that was for the Arbeitseinsatz. This order certainly went to Oberst FULLRIEDE in writing, but it was only after it had been signed that I first also told him all about it on the telephone. Later when I was living in Germany I learnt that a great number of the civilians taken away had died in Germany."

Considering that at the sitting of the Court the accused CHRISTIANSEN has stated:

"On 29th November 1946 I was present at the interrogation of General von WOLISCH by the examining magistrate DR. de ZAAVER and concurred in what my Chief of Staff then stated, which statement I now hear read out. I have not noticed anything incorrect in what he said. It also stands to reason that I personally signed the written order to Oberst FULLRIEDE concerning PUTTEN although I do not now remember it. However I always did sign such orders personally. It is also correct that I was very excited after receiving the news about the PUTTEN attack. Leaving aside who signed the order in question

I must admit that I know all about orders in the matter of a "PUTTEN" action and that this action had my approval. I know further that General SCHONGARTH was mixed-up in this affair. The measures taken against PUTTEN were "vergeldingsmaatregelen" (retaliatory measures). These were always taken quickly."

Considering that a diary shown to witness FULLRIEDE contains among other things:

"2nd October. By order of BERLIN via the W.B.N. all men from 18-50 will be deported to Germany for the Arbeits-einsatz, all women evacuated and PUTTEN burned down. The men to be made over to the SS. for deportation and dispatch", while the following also appears:

"Instead of some 600 houses only 87 blown up and burned".

Considering that a letter dated 20th April 1946 and signed: "UDOLF FISCHER", addressed to: "The Military Court, The Hague, Holland, contains among other things:

"I was Oberst FULLRIEDE's orderly from 1939 and know all about the affair (PUTTEN). Oberst FULLRIEDE received orders to burn the town down, to shoot the male inhabitants if guilty and to remove the other men between the ages of 18 and 50 to Germany for work there, to evacuate the women and children, etc."

Considering that a statement dated 17th March 1947 made out on oath of office by ALBERT KUILMAN, inspector 2nd class in the State Criminal Investigation Department (prod. 120/V), contains that the following statement was made to him in substance KARL PETER BERG:

"At the time of the action in PUTTEN I was commandant of the Bolizeiliches Durchgangslager in AMERSFOORT. On 2nd October 1944 Oberst PAUSINGER of the Streifendienst (patrol service) and a Luftwaffe Oberstleutnant came to me and asked whether I had room for about 600 prisoners from PUTTEN who had been arrested by the Wehrmacht. They told me that it would only be for a few days. These prisoners arrived in the camp at AMERSFOORT at about 4 p.m. the same day. They were guarded by an SS; battalion. I got orders later to make up a transport of about 400 persons for NEUENGAMME and the prisoners from PUTTEN must belong to this. This transport left for Germany on the 11th or 12th October 1944. I released some of the prisoners from PUTTEN."

Considering that a written document bearing at the top "W.B. 2707 - (1) 2-10-44 20.30 o'clock I C Evening Report W.B. Neth. I C (uffz. SCHLEGEL)" contains among other things:

1. Some 3. Supply trains Friesland area, 1 attack on Wehrmacht motor car, 1 officer wounded, carried off, 1 officer fallen, 1 soldier badly wounded, south of PUTTEN (25 km. W. APELDOORN) (Retaliatory measures: able-bodied 17-50 to Germany for compulsory labour. Rest of population evacuated, PUTTEN burned down except for houses of N.S.B. persons and Netherlander friendly to the Germans etc.

Received: O. Geff. DEICHELBOHRER."

Considering further with regard to the acts charged in the opening of the indictment and under 3 in particular: that it is moreover a fact of general knowledge that causing part of a village to be burned to the ground, women and children to be evacuated and a great number of men to be taken away to the country of the occupant from the very nature of the acts themselves-

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themselves run counter to all rules of humanity, and also that, except under special circumstances which in this instance have not appeared at the sitting, everyone of the accused's education and position who gives orders for the aforesaid acts must be aware of the incompatibility of these orders with the elementary claims of humanity;

Considering that it is also a fact of general knowledge that actions such as those declared proved, which contained reprisals whereby the aforementioned rights were attacked and whereby in no single instance was a reasonable length of time waited in order that the tracing of the authors of the acts of resistance might be arrived at, and whereby there was no proportion of any sort between the seriousness of the act of resistance and the scope of the reprisals taken, were contrary to the aforementioned rules of international law as well as to the elementary rules of humanity, while it is also a fact of general knowledge that except under special circumstances, which in this instance have not appeared at the sitting, everyone of the accused's education and position who causes such actions is aware that they are incompatible with the aforesaid rules, the which with regard to that charged under 1 even appears from the previously mentioned statements by the accused himself;

Considering that the acts and circumstances appearing in the foregoing evidence and the above-mentioned acts and circumstances of general knowledge which are used as proof for each of the acts charged constitute an equal number of causal acts and circumstances on the grounds of which the Court deems proved and is convinced that the accused committed the acts with which he is charged, on this understanding that it can be accepted as proved; that he in the Netherlands, during the time of and in connection with the war of aggression begun by Germany against the Netherlands on 10th May 1940 and before 15th May 1945, as German military commander in this country, that is as Wehrmachtbefehlshaber in die Niederlande, misusing his power and authority as such:

1. intentionally, contrary to the laws and customs of war, after an attempt had been made in ROTTERDAM on 7th August 1942 by one or more persons then unknown to attack a train transporting German soldiers as a retaliatory measure caused Netherlands hostages to be shot by presenting a demand to this effect to the Reichskommissar für die besetzten niederländischen Gebiete and urging this functionary to have such a measure carried out and holding a conference with him for the purpose of having such a measure taken, as a result of which five Netherlands who were innocent of the attempted attack, namely DR. R. BAELE, Chr. BENNEKERS, Dr. Count O.E.G. van LIMBURG STIRUM, W. RUYSS and Baron A. SCHIMMELPENNINCK van der OYE, were shot and killed by a firing-squad on or about 15th August 1942 in GOIRLE municipality;
2. intentionally, contrary to the laws and customs of war, after a German soldier had been shot dead in HAARLEM on or about 30th January 1943 by one or more persons unknown demanded of and urged the Höhere SS- und Polizeiführer who was also Generalkommissar für das Sicherheitswesen that a number of Netherlands citizens should be shot as a retaliatory measure, as a result of which ten persons namely:

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- B. CHAPON, H.O. DRILSMA, P. FRANK, T.Th. LEBBE, K.F. REUMAN, W. de la RIE, R. STRENGHOLT, S. WARRENHOVEN, P. WEY and I. ZWANENBEEK, of whom it was in no way established or proved that they were concerned in carrying out that attack, were shot and killed by a firing-squad on or about 2nd February 1943 in BLOEMENDAAL municipality;
- 3; intentionally, contrary to the laws and customs of war and of humanity, after an attack had been made in or near PUTTEN on the night of 30th September-1st. October 1944 on German soldiers sitting in a car, by his orders, at anyrate by his instructions, as a retaliatory measure caused a great part of the able-bodied male population of PUTTEN to be arrested by German troops under his command and had them handed over to the SS to be taken off to Germany, as a result of which these men with a few exceptions were deported to Germany, caused women and children to be driven out of their homes in PUTTEN and had a great number of houses in PUTTEN set on fire and destroyed

Considering that where illegitimacy as well as the intent of illegitimacy form elements of the declaration that the charges have been proved itself, the Court wishes in this connection to discuss the defences brought to bear against the declaration that these elements of the indictment have been proved as being defences against part of this declaration;

Considering that ⁱⁿ this connection it is advanced in the first place that the actual transactions declared to be proved are not contrary to the laws and customs of war and to humanity because they could be justified as a defence on the part of the occupant against a resistance illegitimately carried out by the population of the occupied territory;

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Considering that counsel has argued in this ^Facts declared proved formed a reaction on the part of the occupant, would not have been permissible, in the first place because it is said to be a generally recognised rule in international common law that the civilian population of the occupied territory must refrain from attacks on the army of occupation, and in the second place, because these acts would have been contrary to the obligations laid upon the inhabitants of the occupied territory by the Capitulation Pact concluded on 15th May 1940 by the Commander in Chief of the Combined land and sea forces;

Considering that the Court rejects this defence on the following grounds:

Considering that, even as international law in so far as it regulates the way in which a war and an occupation must be conducted makes no distinction between a legitimately or illegitimately begun war and a legitimate or illegitimate occupation, this same law in so far as it assures the occupant of exemption from punishment for his reaction to acts of resistance committed by citizens of the occupied territory does not depend either on the question as to whether this resistance is or is not legitimate, the answer to this being in essence jointly decided by the question of the legitimacy or illegitimacy of the war itself;

Considering that for this reason the grounds for exclusion which international law recognises for the belligerent and for the occupant continue to apply unabrid-

unabridged even if it is definitely established that the war was begun illegitimately on the part of him who is appealing to these grounds for exclusion, and that thus also the question of the legitimacy or illegitimacy of the resistance committed can have no influence on the question as to whether the accused, who as a reaction to acts of resistance which had been committed carried out the actions declared proved, can appeal to an exclusion from punishment in virtue of international law, which question must therefore be answered quite independent of the defence brought forward;

Considering that the Court is aware that with this view a contradiction arises from the fact, that the same international law which forbids a war of aggression, nevertheless when such a war is being carried on assures exemption from punishment to him who violated international law by beginning that war, but on the other hand it is the opinion of the Court that international law, in so far as it regulates the way a war and occupation must be conducted still had unabridged force and full validity during the second world war, and that the contradiction arising therefrom is a result of the state of imperfection in which the international community found itself at the time the acts declared proved were committed, which imperfection state has to be accepted by the judge as the existing law;

Considering that the rule, that the legitimacy or illegitimacy of resistance by civilians has no influence when answering the question as to whether the occupant can appeal to a ground for exclusion by international law in the present state of the latter, only admits of exception if it concerns deeds by the inhabitants of the occupied territory which form a direct defence against the violation of international law by the occupant, which acts are then a justifiable defence which the occupant may not punish or answer by reprisals, of which acts of resistance however there is no talk in the present instance;

Considering that with regard to this the Court wishes further to let it be known as its considered judgment that it does not subscribe to the arguments on the grounds of which counsel considers the resistance committed in the present case to be illegal;

Considering that Counsel has certainly advanced that it is a rule of international Common law that the civil population must refrain from attacks on the army of occupation, but that the Court denies that such a rule would exist, in the sense that the civil population would be violating a duty in law vis-à-vis the occupant by acts of resistance such as occurred here;

Considering that as long as international law ^{when} regulating the way a war and an occupation must be conducted does not discriminate between a legitimate and an illegitimate occupation a rule of that sort would be unthinkable;

Considering that if such a rule does exist it only has the significance that the civil population, if it considers itself justified in committing acts of resistance, must know that in general counter-measures within the limits set by international law may be taken against such with impunity by the occupant, and that therefore the question whether the civil population in occupied territory is justified in acts of resistance must be answered entirely according to other standards and apart from the question as to whether acts of resistance may be answered by reprisal measures;

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Considering that the above explanation of the alleged rule is also in complete agreement with the regulation made by international law with regard to espionage, according to which a belligerent violates no right of the opposing party by making use of espionage, while on the other hand espionage can be countered with impunity by the opposing party who may inflict the severest penalties on the spies themselves;

Considering that counsel has appealed further to the contents of the Capitulation Pact concluded on 15th May 1940 in order to demonstrate that the population of the Netherlands had a duty in law vis-à-vis the occupant to refrain from acts of resistance;

Considering that this appeal fails because—apart from the fact that the said pact itself does not contain such an obligation on the civil population but only an obligation on the part of him who in the name of the Netherlands forces concluded the pact to issue such an order to the population, which obligation was moreover complied with—this pact is a capitulation one which can impose no obligations on the civilians of the occupied territory unless ratified by the Netherlands Government which ratification did not take place;

Considering that Counsel has further advanced that the actions charged against the accused were not contrary to the rules and customs of war and to humanity because they would be justified by international law as reprisal measures;

Considering that as has already been weighed in the opinion of the Court it is not the legitimacy of the reprisals taken which is concerned here but only their exemption from punishment; and the Court will therefore also understand the defence in this sense;

Considering that the Court holds this defence to have no foundation with regard to all the points of the indictment and the declaration whereby these were said to have been proved;

Considering that it is a fixed rule of international common law that if it is wished with impunity to take reprisal measures such as those declared proved, which reprisal measures hit innocent people for acts not originating with them but with certain individual fellow-citizens, the two following conditions must certainly be complied with:

1. first, that the reprisal measures must be an ^{last resource} extreme means to protect the safety of the occupant and therefore only to be applied if the actual authors of the acts which give rise to reprisals cannot be found and punished;
2. then, that there must be a due proportion between the act which gives rise to reprisal measures and the reprisal measures themselves;

Considering that in the opinion of the Court neither of these two conditions was complied with in the cases under consideration;

Considering then with regard to the first act charged (GOITLIE):

that the first condition was not complied with now that it has been definitely established at the sitting that some days before the execution of the five hostages the German authorities were
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already on the track of the author or authors of the attack at ROTTERDAM and that the accused knew this, while it has not appeared in one single respect that there was an urgent necessity to resort at once to the taking of measures against the innocent persons without awaiting the result of a proper investigation, all the more so that the attack in question failed and not one German soldier was killed or wounded by it; that the second condition laid down was also not complied with, there being in the Court's opinion no due proportion between the abortive attack on the one hand and the shooting of five innocent hostages, only one of whom moreover was arrested after the attack, on the other;

Considering with regard to the second act charged
BLOEMENDAAL:"

that in this case too the aforesaid first condition cannot be considered to have been complied with for the shooting of ten so-called "communists" as a reprisal for the killing of one German non-commissioned officer in HAARLEM occurred only three days after the act had taken place so that there can have been no talk of a proper inquiry as to the author or authors;

Considering that counsel has also put forward the defence with regard to this point that the state of emergency would justify the fact that this condition was not fully complied with in the present instance, this defence being illustrated thus, that in view of the military situation in which Germany found itself and seeing the many attacks which had already taken place in the neighbourhood of HAARLEM direct intervention was necessary for reasons of prestige and self-preservation, and that there was here thus a question of military necessity;

Considering that the Court most emphatically rejects this defence;

Considering then that this proposition would lead to the pernicious theory that:

"Kriegsraison geht vor Kriegsmanier" (the arguments of war take precedence over the manner of warfare) and that it is a generally recognised rule of international law that military necessity may not cause the rules of international law regarding war and occupation to be put on one side, otherwise international law would become entirely illusory on this point;

Considering indeed that this rule is based on the following, that the rules which international law has drawn up on this point have been given expressly in the knowledge that conflicts with the claims of military necessity could here arise and precisely in order to put definite limits to what may occur with impunity in war and to the means by which it may be tried with impunity to attain the objects of the war, and that on these grounds conflicts foreseen by the international legislator and for which for that reason he wished to make a regulation cannot naturally put this regulation on one side;

Considering that the second condition is also not complied with in this case, for even if it may not be possible to lay down fixed rules about the "due proportion" mentioned there, the shooting of ten Netherlands civilians, of whom it

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in no way appeared that they were concerned in that attack, for one German non-commissioned officer killed must in any case be considered as much too extreme;

Considering with regard to the third act charged (PUTTEN) that here, too, neither of the aforementioned conditions was complied with, in fact in this case it has not appeared that a serious inquiry after the author of authors was started before the retaliatory measures described above were taken the very day after that of the attack, this causing all the more surprise from the fact that the wounded and kidnapped German officer was again in German hands on the early morning of Monday 2nd October 1944, thus already before the reprisal measures were carried out, it following from this that it can in every way be assumed that a seriously undertaken investigation could have led to the discovery of the author(s) of the attack; that further, in the opinion of the Court there is no due proportion in this case also between the attack on two German officers on the one hand ~~and~~ on the other the burning to the ground of a part of PUTTEN village and the evacuation of women and children and deportation of a great part of the male population to the country of the occupant;

Considering that Counsel in this connection has further advanced that hostages could have been shot with impunity here and that thus a fortiori the lesser reprisals which were actually carried out could take place with impunity;

Considering that the Court rejects this defence because, apart from the fact that the killing of hostages in the case under discussion certainly could not have taken place with impunity because the first mentioned condition was in no way complied with, the reprisal measures actually taken, by which the liberty, the rights of the family and the property of a great number of innocent citizens were violated, while there was also the chance of still more serious results, certainly weigh heavier than the killing of a single or very small number of civilians;

Considering that counsel has further argued that even had the accused's aforesaid actions been contrary to the laws and customs of war he, accused, knew nothing about them, so that here the plan demanded for a conviction is lacking;

Considering that the Court judges this defence also to be fully refuted by what has been weighed with regard to the evidence in this connection;

Considering furthermore that, as has appeared at the sitting from his own statements as well as from those of witness RAUTER, the accused to account for his demand that hostages be shot as a result of the attacks at ROTTERDAM and HAARLEM, has always appealed to a "Befehl" by the O.K.W. and to "Führerbefehle" and has not stated that he considered the measures asked for by him, as well as those which he ordered with regard to PUTTEN, to be justified by the rules of war;

Considering that the Court is then also of the opinion that the accused indeed bothered little or not at all about the question as to "what might or might not" according to the rules of war, but his statement that after having received the order from the O.K.W. regarding the attack at ROTTERDAM he said: "Jetzt haben wir die Mordschweineri da", also shows

that he must have been fully aware that with his demands and orders in question he had gone outside the limits within which the rules of land warfare allow what would otherwise be a crime;

/further Considering that counsel has in addition advanced that the accused is not punishable because when he committed the actions charged against him, and which have been declared proved he found himself in a state of ^{distress} emergency (Nothstand), as the attacks called a conflict of legal interests into being for him, namely, the safety of the German Wehrmacht on the one hand and the interests of the Netherlands population on the other;

Considering that the Court holds that this argument too is incorrect and rejects it on the grounds that a state of emergency such as that mentioned only comes into question when an immediately threatening danger exists which can only be removed by taking immediate action, which cannot be said of the attacks now under consideration;

Considering that counsel as a grounds for exclusion has also appealed to the fact that the accused committed the actions charged against him by order of his superiors, namely the "Oberkommando der Wehrmacht" (O.K.W.);

Considering that this argument also fails;

Considering that it has already been decided above that the aforesaid actions were contrary to the laws and customs of war and therefore illegitimate, also that the accused must have been aware of this, from which the illegitimacy of the said orders follows;

Considering that in the law on the customs of war as this has developed in the last few years it is generally voiced that a subordinate who has committed a crime can only successfully appeal to an order received to that effect from his superior if he did not know that this order was illegitimate and it could not be expected of him that he should know of this illegitimacy, while if this is not the case the appeal can at most lead to the acceptance of extenuating circumstances for the subordinate;

Considering that it may furthermore be remarked here that only with regard to the first act charged has the accused appealed to a direct order by the O.K.W.;

Considering that counsel has also spoken of the conception of "duress" although he has made no definite appeal to this, and has given it as his opinion that non-compliance by the accused with the above orders could have meant danger to life for him, perhaps even the loss of his own life;

Considering that this defence too does not stand because the high position occupied by the accused, who moreover as has been established was a protégé of GOERING's, in the Court's opinion makes this danger improbable while further even had it existed for the accused he ought to have risked it, for as Wehrmachtsbefehlshaber it was his lawful duty to protect the lives of the population;

Considering that at the end of his speech for the defence counsel has remarked further that the maximum punishment which can be inflicted on the accused on conviction is three years' imprisonment;

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Considering that the Court also cannot agree with this from the very fact that what has been declared proved with regard to the accused does not constitute one of the crimes specified in article 91 of the Military Penal Code: (See footnote);

Considering moreover that both from article 27a of the Extraordinary Penal Law Decree, which next to the violation of international law and of the rules of humanity refers to other acts punishable by Netherlands law, as well as from the history of how this article came into being, the legislator having wished next to the rule for Netherlands military men laid down in article 91 of the Military Penal Code to make a special rule for those who, when in the war, state or public service of or for the enemy, act contrary to international law and to humanity, it follows most clearly that with the acts punishable according Netherlands law referred to in article 27a of the Extraordinary Penal Code article 91 of the Military Penal Code is particularly not meant, but on the contrary what are meant are those punishable acts which do not make the violation of an international obligation punishable as such but which protect those legal interests which are affected by such violation of international law;

Considering that the Special Court does not deem proved anything more or otherwise charged against the accused than has been declared proved above and therefore in respect to that an acquittal should follow;

Considering that with regard in particular to what appears in the opening of the indictment and under 3 primary the Court does not consider it proved that as a result of accused's action the majority of the men deported to Germany died in horrible circumstances;

Considering with regard to this that it has not been proved that the accused knew or must have known that the deported men would be put into a concentration camp in Germany, and where it has been proved that the death of the majority of these men was the result of being in such a camp that result cannot in the penal sense be called a result of the actions of the accused which have been declared proved;

Considering moreover that it has been established that the death of these men was the result of their being in German concentration camps and that they were there as the result of an order which was issued after consultation between the chief of staff of the W.B.N. and the Sicherheitsdienst, while it has in no way been established that this further order was a result which could be reasonably expected of the first order given by the accused and declared to have been proved, so that the Court can let the question drop as to whether the accused had any share in this second order of which nothing appears in the indictment;

(footnote)

Art. 91, Mil. Penal Code:

"He who intentionally acts against the enemy contrary to any provision appearing in a pact holding good between the Netherlands and the power with which the Netherlands is at war or to any regulation laid down as a result of such pact shall be punished with at most three years imprisonment."

the superior who intentionally allows one of his subordinates to commit such an act shall receive the same punishment."

Considering that what has been declared proved constitutes the crimes of:

During the time of the present war and before 15 May 1945 when in the ~~active~~ military service of the enemy being guilty of any war crime as expressed in article 6 under B of the Charter of the London Agreement of 8th August 1945, repeated several times, and of any crime against humanity as expressed in article 6 under C of the said Charter, provided for and made punishable by articles 27A and 28 of the Extraordinary Penal Law Decree and article 57 of the Penal Code, which crimes also contain the elements of or at anyrate show the greatest similarity to -the following acts punishable according to Netherlands law:

1. by misuse of authority intentionally inciting to murder, committed several times;
2. by misuse of authority intentionally inciting deliberate arson through which there is fear of common danger to property, committed several times;
3. by misuse of authority intentionally inciting the deliberate and illegal destruction of any property belonging to another, committed several times;
4. by misuse of authority intentionally inciting kidnapping, committed several times;
5. during the time of the present war intentionally exposing another to kidnapping by the enemy, committed several times, this act in several cases having resulted in loss of liberty for more than one month;
6. by misuse of authority intentionally inciting the "by force illegally compelling another to do something", committed several times;

which crimes have respectively been provided for and made punishable in Netherlands law by articles 47, 57, 289, 157, 350 and 278 of the Penal Code, articles 26, 1, 11, and 28 of the Extraordinary Penal Law Decree and 284 of the Penal Code;

Considering that the accused is therefore punishable, no circumstance having appeared which would remove or excluded his liability to punishment;

Considering with regard to the punishment to be inflicted on the accused:

that accused was one of the three chief personages who made the years of the occupation a hell for Netherlands, a man who together with the Reich Commissioner, SEYSS INQUART and the General of the Waffen SS, RAUTER, helped to spread a wave of National-Socialist terrorism over our Country and who, as a worshipper of HITLER and a protégé of GOERING, under the motto of "the end justifies the means" did everything in his power ruthlessly (rücksichtslos) to help further the victory of the Third Great Reich, but the Court on the other hand wishes to take into account the already advanced age of the accused as well as the circumstances that of the aforesaid three chief personages he was undoubtedly the least guilty, and as a General in the army often found himself in a very difficult position as a result of superior orders;

In view further of article 27 of the Penal Code:

Administering the Law:

Declares the accused guilty of the acts qualified and declared proved above and therefore punishable;

-Sentences-

Sentences him on that account to Twelve Years' imprisonment;

Decrees that the time spent in detention by the condemned since 15th January 1946 be subtracted in full when serving this sentence of imprisonment;

Declares not proved anything more or otherwise charged against the accused than has been declared proved above;
Acquits him of such.

Sentence passed by

Dr. Baron J.A.G. de VOS van STEENWIJK,
Dr. Professor D. van ECK,
Rear-Admiral K. van ALLER,

President
Judge
Military Judge,

in the presence of
Dr. H.H. KIRCHHEINER,

Clerk of the
Court,

and pronounced at the public sitting of the aforesaid Special Court on 12th August 1948.

S/H.H. KIRCHHEINER

S/de VOS van STEENWIJK
D. van ECK
K. van ALLER.

JV.

TEL.: TERminus 3081

Russell Square House
Russell Square
London, W.C.1.

9 Sept. 1949

Dear Miss Sweeny,

Thank you for your letter of 2 September 1949 and the enclosed translations of judgments in the cases against Ahlbrecht, Beck and Gerbig.

In regard to your inquiry I have to advise you that no more translations will be required in future as the study of Dutch trials and the report upon them will be concluded in about two or three weeks.

I thank you very much for your kind cooperation in the matter.

Yours sincerely,

J. J. Litawski
Consiltant
Division of Human Rights

Miss J. Sweeny,
Secretary to Dr. M. W. Mouton,
Carel van Bijlandtlaan 1,
The Hague.